

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DARLENE D. WINN)	
and VANESSA CUSHENBERRY,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 19-2715-EFM
)	
ENSIGN U-HEALTHCARE RESORT)	
OF LEAWOOD,)	
)	
Defendant.)	

ORDER

The files of the court indicate plaintiffs have let this action go dormant. On June 2, 2020, the presiding U.S. District Judge, Eric F. Melgren, issued an order staying the case while the parties submit to arbitration.¹ In response to an e-mail inquiry by plaintiff Darlene D. Winn, the undersigned U.S. Magistrate Judge, James P. O'Hara, issued a supplemental order on September 22, 2020, directing plaintiffs to initiate arbitration by submitting a written request for arbitration to the Executive Director of The Healthcare Resort of Leawood, pursuant to the language of the relevant arbitration agreements.² A recent status report filed by defendant indicates that on September 28, 2020, defense counsel sent an e-mail to plaintiffs informing them that he was

¹ ECF No. 13.

² ECF No. 14.

willing to accept on behalf of defendant any written request for arbitration.³ Defendant states that as of the date of the report, December 1, 2020, it had “not received a written request for arbitration or any further communications from plaintiffs indicating an intent to proceed with arbitration.”⁴

Plaintiffs are hereby warned that, even assuming their claims now aren’t barred by the one-year statute of limitations in their agreements to arbitrate, the court can dismiss their action if they fail to prosecute it.⁵ The court may be inclined to dismiss this case, with prejudice to refiling, for lack of prosecution if plaintiffs do not take action very soon to move forward with arbitration.

Defendant is directed to file a status report by January 4, 2021, advising the court as to the status of arbitration.

The clerk is directed to mail a copy of this order to the pro se plaintiffs by regular and certified mail.

IT IS SO ORDERED.

Dated December 2, 2020, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

³ ECF No. 15 at 2.

⁴ *Id.*

⁵ *See* Fed. R. Civ. P. 41(b).